

**VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY
DIVISION OF LABOR AND EMPLOYMENT LAW**

FIELD OPERATIONS MANUAL

CHAPTER SEVEN GARNISHMENT

This document is part of the latest version of the Virginia Department of Labor and Industry Division of Labor and Employment Law's Field Operations Manual. This document supersedes any and all previous editions.

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DISCLAIMER

The Field Operations Manual (FOM) is an operations manual that provides the Division of Labor and Employment Law investigators and staff with interpretations of statutory provisions, procedures for conducting investigations, and general administrative guidance. The FOM was developed by the Labor and Employment Law Division under the general authority to administer laws that the agency is charged with enforcing. The FOM reflects policies established through changes in legislation, regulations, court decisions, and the decisions and opinions of the Virginia Department of Labor and Industry. Further, the FOM is not used as a device for establishing interpretative policy.

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A. Coverage

Homestead and Other Exemptions, commonly referred to as the garnishment statutes, are contained in § 34-29 and § 34-33, Chapter 4, of the Code of Virginia. They apply to both private and public employees and also include independent agents/subcontractors (§ 34-29(d)(1)).

B. DOLI'S Responsibility

The Homestead and Other Exemptions Law requires the State Commissioner of Labor and Industry to prescribe by regulation the multiple of the federal minimum hourly wage equivalent in effect to that prescribed by § 206(a)(1) of Title 29 of the United States Code in effect at the time earnings are payable (§ 34-29(a)(2)). All other matters surrounding garnishments are to be handled by the courts. DOLI does not accept garnishment complaints.

DOLI will continue, however, to answer questions concerning garnishment. This service is still being offered, because there is no public forum, other than DOLI, that can assist employers.

C. Definitions

1. "Garnishment" means any legal or equitable procedure through which earnings of any individual are required to be withheld for the payment of any debt. Most garnishments are made by court order under which a creditor seeks to require an employer to withhold a portion of an employee's wages. The amount withheld is required to be paid directly to the court, which then disperses it to the creditor.

2. "Disposable earnings" means that part of an employee's earnings remaining after deductions from those earnings of any amount required by law to be withheld. The only amounts allowed to be deducted to determine disposable earnings for purposes of garnishment are the following:

- (1) Federal income tax withholding deductions.
- (2) Federal social security tax deductions.
- (3) State and city withholding deductions.

Examples of deductions which are not allowed to be taken into account for the purpose of determining "disposable earnings" are:

- (1) Deductions to purchase savings bonds.
- (2) Deductions for contributions to religious, charitable, or educational organizations.
- (3) Deductions for union dues and union initiation fees.

- (4) Deductions for health and welfare premiums, including company retirement programs.
- (5) Deductions for board, lodging, or other facilities furnished to an employee by the employer.
- (6) Deductions for the purchase of stock in the employer's corporation.
- (7) Deductions pursuant to a voluntary assignment of wages by an employee.
- (8) Deductions to repay loans or payroll advances made to the employee by the employer.
- (9) Deductions for merchandise purchased from the employer.
- (10) Wage assignments effected under federal or state law and executed by the courts or governmental agencies.
- (11) Other levies or garnishments.

3. "Earnings" means compensation paid or payable for personal services whether called wages, salary, commission, bonus, or otherwise, and includes periodic payments to a pension or retirement program. The term "earnings" is given its widest scope under § 34-29. Dollar value of meals and lodging furnished by an employer to employees is regarded as earnings for purposes of garnishment. Tips are not usually regarded as earnings, because tips do not pass through the hands of the employer. One rule that can usually be used to determine "earnings" subject to garnishment is to determine whether the item of compensation is controlled by the employer, that is to say, it passes through the employer's hands for distribution to the employee.

The term "earnings," however does not include the following items which are exempt under federal and state law:

- (1) Social security benefits and supplemental security income (42 U.S.C. § 407).
- (2) Veterans benefits (38 U.S.C. § 3101).
- (3) Federal civil service retirement benefits (5 U.S.C. § 8346).
- (4) Annuities to survivors of federal judges (28 U.S.C. § 376(n)).
- (5) Longshoremen and Harborworkers Compensation Act (33 U.S.C. § 916).
- (6) Black lung benefits.

Exemptions listed under 1 through 6 above may not be applicable in child support and alimony cases (42 U.S.C. § 659).

- (7) Seaman's, master's or fisherman's wages, except for child support or spousal support and maintenance (46 U.S.C. § 1109).
- (8) Unemployment compensation benefits (§ 60.2-600, Code of Virginia). This exemption may not be applicable in child support cases (§ 60.2-608, Code of Virginia).
- (9) Public assistance payments (§ 63.1-88, Code of Virginia).
- (10) Homestead exemption of \$5,000 in cash (§ 34-4, Code of Virginia). This exemption may not be available in certain cases, such as payment of rent or services of a laborer or mechanic (§ 34-5, Code of Virginia).
- (11) Property of disabled veterans - additional \$2,000 cash (§ 34-4.1, Code of Virginia).
- (12) Workers' Compensation benefits (§ 65.2-531, Code of Virginia).
- (13) Growing crops (§ 8.01-489, Code of Virginia).
- (14) Benefits from group life insurance policies (§ 38.2-3339, Code of Virginia).
- (15) Proceeds from industrial sick benefits insurance (§ 38.2-3549, Code of Virginia).
- (16) Assignments of salary and wages (§ 55-165, Code of Virginia).
- (17) Benefits for victims of crime (§ 19.2-368.12, Code of Virginia).
- (18) Preneed funeral trusts (§ 54.1-2823, Code of Virginia).
- (19) Certain retirement benefits (§ 34-34, Code of Virginia).

4. "One indebtedness" refers to a single debt regardless of the number of levies made or proceedings brought for its collection.

5. "Subjected to garnishment" means actual withholding of the employee's wages for a debt. Mere receipt by an employer of a garnishment order does not constitute "subjected to garnishment." The employee is "subjected to garnishment" only when it is actually deducted from his earnings.

B. Restrictions on garnishment amounts as prescribed in subsection (a) of Section 34-29:

1. The maximum part of an individual's total disposable earnings in any workweek which are subject to garnishment may not exceed the lesser of 1) 25 percent of the disposable earnings for that week or 2) the amount by which the disposable earnings for that week exceeds 40 times the federal minimum hourly wage prescribed by the Fair Labor Standards Act in effect at the time the earnings are payable (currently this is \$7.25 an hour or \$290.00 per week). The

Commissioner of Labor and Industry prescribes the multiples in effect which would be applicable to pay periods longer than a week.

2. The maximum amounts of an employee's aggregate disposable earnings which may be garnished in a pay period for an ordinary debt are as follows:

(1) WEEKLY

Disposable earnings of \$290.00 (40 x "X" (federal hourly minimum) or less:
NONE may be garnished.

MAXIMUM 25%, after ensuring that the employee retains at least 40 x X (federal hourly minimum), which is currently \$290.00.

(2) BI-WEEKLY

\$580.00 (40 x 2 weeks x "X" (federal hourly minimum) or less:

NONE

MAXIMUM 25%, after ensuring that the employee retains at least 40 x 2 weeks x X (federal hourly minimum), which is currently \$580.00.

(3) SEMI-MONTHLY

\$628.33 (40 x 2.16665 weeks x "X" (federal hourly minimum)) or less:

NONE

AMOUNT ABOVE \$628.33

MAXIMUM 25%, after ensuring that the employee retains at least 40 x 2.16665 weeks x X (federal hourly minimum), which is currently \$628.33.

For purposes of this formula, a semi-month is considered 2.16665 weeks.

(4) MONTHLY

\$1,256.66 (40 x 4.3333 weeks x "X" (federal hourly minimum)) or less:

NONE

MAXIMUM 25%, after ensuring that the employee retains at least 40 x 4.3333 weeks x X (federal hourly minimum), which is currently \$1,256.66.

For purposes of this formula, a month is considered 4.3333 weeks.

(5) NO SET PAY PERIOD

In the case of disposable earnings which compensate employees for personal services rendered in a pay period longer than 1 month, the weekly statutory exemption formula must be transformed to a formula applicable to such earnings providing equivalent restrictions on wage garnishment. For example, disposable earnings for 10 weeks is represented by the following formula:

40 x 10 weeks x “X” (federal hourly minimum): NONE CAN BE GARNISHED

More than 40 x 10 weeks x “X” (federal hourly minimum): ONLY THE AMOUNT ABOVE 40 x 10 weeks x “X” (federal hourly minimum) CAN BE GARNISHED.

C. Maximum Amounts Which May Be Taken Under Child Support Orders and Other Legal Proceedings

1. The restrictions in subsection B do not apply to any order for the support of any person issued by a court of competent jurisdiction or in accordance with administrative procedure, which is established by state law, which affords substantial due process, and which is subject to judicial review. The restrictions for such support orders are:

- (1) Fifty percent (50%) of the employee’s disposable earnings may be taken under the support order if the employee is supporting another spouse or dependent other than the one for whom the support order is issued.
- (2) Fifty-five percent (55%) of the employee’s disposable earnings may be taken if the employee is supporting another spouse or dependent other than the one for whom the support order is issued, and the employee is 12 or more weeks in the arrears.
- (3) Sixty percent (60%) of the employee’s disposable earnings may be taken if the employee is not supporting another spouse or dependent other than the one for whom the support order is issued.
- (4) Sixty-five percent (65%) of the employee’s disposable earnings may be taken if the employee is not supporting another spouse or dependent other than the one for whom the support order is issued, and the employee is 12 or more weeks in the arrears.

Note: The support order will indicate whether 50, 55, 60, or 65 percent of the disposable earnings should be withheld.

2. The garnishment exemptions do not apply to any order of any court of bankruptcy under Chapter XIII of the Bankruptcy Act; therefore, 100% of disposable earnings could be withheld.

3. The garnishment exemptions do not apply to any debt due for any local, state, or federal tax; therefore, 100% of the disposable earnings could be withheld.

Note: The restrictions for bankruptcy and tax debts are not provided for under § 34-29. These

amounts are determined by the applicable bankruptcy and tax laws. You should advise the inquirer to contact the appropriate bankruptcy court or tax department for clarification of the amount to be withheld.

D. Date wages paid or payable controlling. The date that disposable earnings are paid or payable, and not the date the Court issues the garnishment order, is controlling in determining the amount of disposable earnings that may be garnished. For example, when a withholding is made after July 24, 2009, under a garnishment order issued by a court before July 24, 2009, weekly disposable earnings in the amount of \$290.00 or less would not be subject to garnishment, even though the order was issued when the restriction protected the smaller amount of \$290.00.

E. Discharge for one indebtedness:

Subsection (f) of § 34-29 prohibits an employer from discharging any employee because his earnings have been subjected to garnishment for any one indebtedness. However, this section does not prohibit discharge if the employee's earnings are subjected to garnishment for a second debt. If an employee on being advised that garnishment is being considered, obtains a release from the creditor before there is an actual withholding of earnings for a second debt, the earnings have not been subjected to garnishment. The law does not expressly provide any time limitation between a first and second indebtedness. Where considerable time such as a year has elapsed between garnishments for one debt and garnishments for another debt, the first indebtedness may no longer be a material consideration in the discharge. Determination in such cases is made on the basis of all facts in the situation.

F. The term garnishment is synonymous with wage assignment, tax lien, and bankruptcy order. Regardless of the title of the legal instrument being used to direct the earnings of an individual to a creditor, in no event may the amount of an individual's disposable earnings exceed the amounts specified in subsections B and C of this section.

G. Section 20-79.3 (8) relating to support orders states: "That the order shall have priority over any other types of liens created by state law against such earnings, except that if there is more than one court or administrative order for withholding for support against an obligor, the employer must honor the terms of the earliest received order and subsequent orders shall be honored in the order of receipt to the extent that the amounts withheld, when combined, do not exceed the maximum limits imposed under § 34-29 as specified in the order being honored."

When there is more than one garnishment in effect, state and/or federal law require they be handled in accordance with the following priority listing:

1. Support Order (Support Order takes priority over tax lien, provided the support order is made before the date of the tax levy.)
2. Tax Lien
3. Bankruptcy Order

4. Ordinary Debt

H. Case Examples

1. An employee's gross earnings in a particular week are \$240.00; if, after deductions required by law, the disposable earnings are \$210.00, the employee's earnings may not be garnished in any amount because the disposable earnings in a particular week are less than \$290.00.
2. An employee's gross earnings in a particular workweek are \$380.00; if, after deductions required by law, the disposable earnings are \$330.00, only the amount over \$290.00 may be garnished. For disposable earnings of \$330.00, only \$40.00 may be deducted for the garnishment in this week. The remaining \$290.00 would be paid to the employee.
3. An employee's gross earnings in a particular workweek are \$500.00; after deductions required by law, his disposable earnings are \$400.00. In this week, 25 percent of the disposable earnings above \$290.00, or 25 percent of \$110.00, may be deducted for the garnishment. Twenty five percent of \$110.00, or \$27.50, may be deducted. The employee would receive \$372.50.
4. A garnishment order is received on Wednesday requiring wages earned up to that day to be withheld. The employee is paid \$70.00 a day. Since less than \$290.00 has been earned, no garnishment is permitted. However, if another garnishment order is received when the workweek is completed, the employer should withhold on the basis of the earnings for the entire week.
5. An employee paid bi-weekly has disposable earnings of \$500.00 for the first week and \$200.00 for the second week of the pay period, or a total of \$700.00. In a bi-weekly pay period when disposable earnings are above \$580.00, 25 percent may be withheld for the garnishment. It does not matter that the disposable earnings in the second week are less than \$290.00 - 25 percent of the amount above \$580.00, or \$120.00, is subject to garnishment.
6. An employee on a \$500 weekly draw against commissions has disposable earnings each week in the amount of \$400. Commissions paid monthly total \$4,000 for the month after deductions required by law. Each draw and the balance due at monthly settlement are separately subject to the law's restrictions. Thus, 25 percent of \$400 or \$100 may be deducted from each draw for the garnishment. At the end of the month, the \$1600 previously drawn is subtracted from the \$4,000 settlement figure, and 25 percent of the balance (\$2,400) or \$800 may be withheld for garnishment.
7. An employee who has \$150 disposable earnings (gross weekly less taxes) becomes subject to garnishment issued by the court directing the employer to withhold \$60 for child support. The employee is not supporting another spouse or child other than the one represented in the court order nor is there any indication in the court order that the employee is 12 or more weeks in the arrears. Since the employer may withhold up to 60 percent of the employee's disposable earnings, the \$60 may be legally withheld. However, no additional withholding may be made that week if another garnishment order resulting from an ordinary debt is subsequently

received.

8. An employee who has \$150 weekly disposable earnings becomes subject to garnishment directing his employer to withhold \$80 for alimony. The employee has remarried and is supporting another dependent other than the one represented in the court order. The court order does not indicate the employee is 12 or more weeks in the arrears in alimony payments. Since in this instance the employer can only withhold 50 percent of the employee's disposable earnings, only \$75.00 can be legally withheld.

9. An employee's gross earnings for a week are \$400. Prior to receiving a garnishment, the employer has received a wage assignment from the Department of Social Services to deduct \$102 a week or 50% of disposable earnings, whichever is less, for child support. Only taxes can be deducted from gross wages to determine disposable earnings for the purposes of garnishment. After the tax deductions, the employee has \$340 disposable earnings. The \$102 is deducted for the wage assignment (\$102 is less than 50% of the disposable earnings figure of \$340). If 25% or more of an individual's disposable earnings are being withheld for a support debt (in this example, 30% or \$102 is being withheld), no additional amount may be withheld for an ordinary debt.

10. If 45% of an individual's disposable earnings are already being deducted for child support, and a state tax lien is received for 70% of the individual's disposable earnings, only 55% of the disposable earnings can be applied to the tax lien. Support orders have priority over tax liens.

11. Assume an employer is withholding 25% for a garnishment on an ordinary debt. A support order is subsequently served on the employer for more than 25%. The support order has priority under Virginia law and should be honored. No additional amount can be deducted for the first garnishment.

12. Assume an employer is withholding 25% for a garnishment on an ordinary debt. The employer receives notice of the commencement of a bankruptcy case involving the employee. The employer must stop withholding wages pursuant to the garnishment. The wages withheld prior to the bankruptcy should be submitted to the court that issued the garnishment summons, with notice to the employee, the employee's bankruptcy attorney, the bankruptcy trustee and the judgment creditor.

13. Assume an employer is withholding 25% for a garnishment on an ordinary debt. The employer then receives a second garnishment for an ordinary debt. The employer must continue to honor the first garnishment even after the return date until it is paid in full, provided that the first judgment creditor renews the first garnishment without a lapse in a pay period.

I. Fees for Garnishment Summons

1. Employers may deduct a fee of up to \$10.00 from a judgment-debtor employee for each garnishment summons it processes.

2. Employers may deduct a fee of \$5.00 each and every time a deduction is made in accordance with a child support order.

3. Employers may deduct \$20.00 for each tax lien processed.

J. Exemption of Wages of Minor from Garnishment

The wages of minors shall not be liable to garnishment or otherwise liable to the payment of the debts of parents (§ 34-33).

K. Procedures

1. DOLI does not accept claims for excessive amounts being withheld for garnishment.

2. If it is determined that excessive amounts have been withheld from an employee's wages for garnishment, the Representative should do the following:

(1) Advise the employee to ask the employer to call the Representative for instructions so that a correction can be made in the amount being deducted.

(2) If the employer will not comply, instruct the employee to file the exemption claim form that comes with a garnishment summons, with the court.

(3) If Nos. (1) and (2) do not bring the employer into compliance, advise the employee that he or she will have to seek the assistance of an attorney, because DOLI does not have the authority to proceed further.

3. The Federal Garnishment Law (Consumer Credit Protection Act) is enforced by the Wage and Hour Division of the U. S. Department of Labor. In Virginia, an exemption for state regulated garnishment has been granted; therefore, the Virginia court system enforces the limitations on the amounts that may be garnished in a pay period, but not the restrictions on discharge from employment. Any inquiries surrounding alleged discharge for one indebtedness should be referred to the closest office of the Wage and Hour Division of the U. S. Department of Labor.

4. DOLI staff will continue to provide assistance to employers, employees, and other interested parties in the areas covered by this section while enforcement is left to the courts.